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TO : Commissioner for Patents
Mail Stop: Appeal Brief-Patents

FROM : Michael J. Marcin, Esq. of Fay Kaplun & Marcin, LLP

DATE : November 1, 2006

SUBJECT : U.S. Patent Appln. Serial No. 09/738,786
for *System and Method for Managing Client Processes*
Our Ref.: 40101/01101

NUMBER OF PAGES INCLUDING COVER : 19

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Attorney Docket No. 40101/01101 (2000.028)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s) : Mccombe et al.
 Serial No. : 09/738,786
 Filing Date : December 15, 2000
 For : System and Method for Managing Client Processes
 Group Art Unit : 2155
 Examiner : Bharat Barot

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 By:  Date: November 1, 2006
 Michael J. Marcin, (Reg. No. 48,198)

TRANSMITTAL

In response to the Notice of Appeal filed September 1, 2006 and the Advisory Action dated August 1, 2006, transmitted herewith please an Appeal Brief for filing in the above-identified application. Please charge the Credit card of Fay Kaplun & Marcin, LLP in the amount of \$500.00 (PTO Form 2038 is enclosed herewith). The Commissioner is hereby authorized to charge the **Deposit Account of Fay Kaplun & Marcin, LLP NO. 50-1492** for additional required fees. A copy of the paper is enclosed for that purpose.

Respectfully submitted,

Dated: November 1, 2006

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Attorney Docket No. 40101/01101 (2000.028)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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PATENT
Attorney Docket No.: 40101 - 01101

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:)
)
 Kevin McCombe et al.)
)
 Serial No.: 09/738,786) Group Art Unit: 2155
)
 Filed: December 15, 2001) Examiner: Bharat Barot
)
 For: SYSTEM AND METHOD FOR) Board of Patent Appeals and
 MANAGING CLIENT PROCESSES) Interferences

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APPEAL BRIEF UNDER 37 C.F.R. § 41.37

In support of the Notice of Appeal filed September 1, 2006, and pursuant to 37 C.F.R. § 41.37, Appellants present their appeal brief in the above-captioned application.

This is an appeal to the Board of Patent Appeals and Interferences from the Examiner's final rejection of claims 1-11 in the final Office Action dated June 8, 2006. The appealed claims are set forth in the attached Claims Appendix.

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Group Art Unit: 2155
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1. Real Party in Interest

This application is assigned to Wind River Systems, Inc., the real party in interest.

2. Related Appeals and Interferences

There are no other appeals or interferences which would directly affect, be directly affected, or have a bearing on the instant appeal.

3. Status of the Claims

Claims 1-11 have been rejected in the final Office Action. The final rejection of claims 1-11 is being appealed.

4. Status of Amendments

There have been no amendments submitted for this application by the Appellants.

5. Summary of Claimed Subject Matter

The present invention, as recited in independent claim 1, describes a system for managing client processes. The system includes a client task (160) for executing the client processes (170). (See Specification, p. 4, ll. 10-17; p. 7, ll. 9-10; Fig. 3). The system also includes a manager task (150) for queuing the client processes into the client task in priority

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order. (See Id., p. 5, ll. 26-28; p. 6, ll. 19-21; Fig. 3). The manager task (150) runs at a higher priority than the client task (160). (See Id., p. 5, ll. 2-3; Fig. 3). The manager task (150) kills the client task (160) when a current one of the client processes (170) is not completed within a predetermined time period. (See Id., p. 5, ll. 23-25; Fig. 3).

The present invention, as recited in independent claim 6, describes a method for managing a plurality of client processes. The method includes queuing (320) a first one of the client processes (170) into a client task (160). (See Id., p. 5, ll. 26-28; p. 6, ll. 19-21; Figs. 3, 5). The first client process (170) is executed (430) within the client task (160). (See Id., p. 4, ll. 10-17; p. 7, ll. 9-10; p. 7, ll. 23-25; Figs. 3, 5-6). The method also includes killing execution of the client task (160) by a manager task (150) executing at a priority higher than that of the client task (160) when the first client process (170) is not completed within a predetermined time period. (See Id., p. 5, ll. 2-3, 23-25; Fig. 3).

The present invention, as recited in independent claim 11, describes a computer-readable storage medium storing a set of instructions, the set of instructions capable of being executed by a processor to manage a plurality of client processes. The set of instructions includes queuing a first one of the client processes (170) into a client task (160). (See Id., p. 5, ll. 26-28; p. 6, ll. 19-21; Figs. 3, 5). The first client process (170) is executed within the client task (160). (See Id., p. 4, ll. 10-17; p. 7, ll. 9-10; p. 7, ll. 23-25; Figs. 3, 5-6). The set of instructions also includes killing execution of the client task (160) by a manager task (150) executing at a priority higher than that of the client task (160) when the first client process (170) is not

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completed within a predetermined time period. (See Id., p. 5, ll. 2-3, 23-25; Fig. 3).

6. Grounds of Rejection to be Reviewed on Appeal

I. Whether claims 1-11 are unpatentable under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,470,346 to Morwood (hereinafter the "Morwood patent") in view of U.S. Patent No. 6,385,637 to Peters (hereinafter the "Peters patent").

7. Argument

I. The Rejection of Claims 1-11 Under 35 U.S.C. § 103(a) as Being Obvious Over U.S. Patent No. 6,470,346 to Morwood in view of U.S. Patent No. 6,385,637 to Peters Should Be Reversed.

A. The Examiner's Rejection

In the final Office Action, the Examiner rejected claims 1-11 Under 35 U.S.C. § 103(a) as being unpatentable over the Morwood patent in view of the Peters patent. (See 6/8/06 Office Action, p. 2, ll. 11-13).

The Morwood patent describes a method for managing and performing computational tasks, wherein the method enables a requesting client to invoke a computation on a remote server. (See the Morwood patent, col. 1, ll. 28-30). This remote computation process allows the user to export any computationally intensive applications to a server that is appropriate for the execution of that particular application. (See Id., col. 1, ll. 50-63).

The Peters patent describes a method for a timer that is incorporated into a multi-tasking operating system of an automatic call distributor system. (See Peters patent, Abstract).

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The periodic process timer collects files or output and arranges and organizes them to provide an engineer or technician with data representations of execution times for each selected software process. (See Id., col. 4, ll. 32-36). Specifically, the periodic process timer is used to allow selected processes to execute so that information concerning the total accumulated processing time is ascertained. (See Id., col. 6, ll. 7-28). The Peters patent teaches that each selected process, specified in the task list 66, has a predetermined amount of time to execute. When the time period expires, the currently executing task is suspended and the amount of time dedicated to the task is recorded. Another process may then begin to execute. (See Id., col. 9, ll. 12-13).

B. The Cited Patents Do Not Disclose That the Manager Task Kills the Client Task When a Current One of the Client Processes is not Completed within a Predetermined Time Period as Recited in Claim 1

In the final Office Action, the Examiner acknowledged that the Morwood patent fails to disclose that "the manager task kills the client task when a current one of the client processes is not completed within a predetermined time period." (See 6/8/06 Office Action, p. 3, ll. 8-10). However, the Examiner further stated that the Peters patent shows these claimed elements, thereby rendering the claimed subject matter obvious over the Morwood patent. (See Id., p. 3, ll. 11-20). Appellants respectfully disagree with the Examiner's rejection of claim 1.

The present application explains that the manager task will monitor a client process within the client task in order to ensure that the processor is continuously available. (See Id., p. 5, ll. 11-15). The recitation of claim 1 makes it clear that if a client process is not

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complete within a predetermined time period, the manager task may kill the execution of the client process within a processor by restarting the client task. If a client task with an errant client process is not killed, the processor may not complete the execution of the process, and the processor may end up in a continuous processing loop where the other client processes are waiting for the processor to become available. (See Id., p. 5, ll. 6-9). When the manager task kills a client task due to remaining incomplete for the predetermined time period, the manager task may then queue the next client process into the client task so that it may be executed by the processor. (See Id., p. 5, ll. 26-28). Therefore, the present invention will allow the resources of a processor in a server to remain continuously available to multitask for several clients despite the possibility of processing an invalid or improper client process.

The Examiner states that the Peters patent discloses killing a client task when a current one of the client processes is not completed within a predetermined time period. (See 6/8/06 Office Action, p. 3, ll. 11-20). However, the Peters patent includes absolutely no disclosure concerning killing a client task. Appellants have reviewed the Peters patent in its entirety and have not found a single disclosure directed at *killing* a process or task before it is completed. Each citation made by the Examiner (e.g., See Peters patent, abstract; Fig. 2; col. 1, ll. 32-53; col. 7, l. 57 - col. 8, l. 8; col. 8, ll. 42-60; col. 9, ll. 5-26; and col. 10, l. 50 - col. 11, l. 16) (See 6/8/06 Office Action, p. 3, ll. 13-14) is directed toward the *suspension* of a process, not the killing of a process as recited in claim 1. The Peters patent further discloses suspending an *execution* of a process to be restarted at a later time, not killing the process itself.

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Furthermore, it is respectfully submitted that there are several indications within the specification of the Peters patent that teach away from such functionality. The first indication is the exclusive use of the term "suspend" as opposed to "kill." It is well known in the art that a current process can be suspended temporarily while another process is serviced. Execution of the suspended process can then be resumed from the point at which it was suspended. There is no disclosure within the Peters patent implying the term "suspend" refers to anything other than what is well known in the art. Secondly, killing a process frustrates the method described in the Peters patent. Specifically, a "timing method for *accurately* timing software processes in a multitasking operating system of an automatic call distributor system." (See Peters patent, col. 1, ll. 6-8). The time associated with a process' execution cannot be accurately determined if the process is *killed* after a predetermined period, regardless of it's completion. However, if the process is *suspended*, as taught in the Peters patent, subsequent time dedicated to the process is added to the time accumulator value 78, resulting in an accurate assessment. (See *Id.*, col. 9, ll. 33-39; col. 6, ll. 15-28). Such an assessment is all the more critical given the intended use of the system and method as a tool to determine whether the processing power of an ACD system can handle current and future demands. (See *Id.*, col. 5, ll. 49-62). A third indication that the Peters patent teaches away from *killing* a process after a predetermined period of time is that branch-back address data may be stored in the status indication word 74 of the task block 68. (See *Id.*, col. 8, ll. 33-35). And finally, the Peters patent teaches that after "*each* period of time that a task or process is executed by the operating system 12, the elapsed time represented by the hardware

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timer 42 is *added* to the time accumulator values 78 correspond to *that task or process*.

Accordingly, the value stored in *each* time accumulator value 78 represents the *total* amount of processing time that the *corresponding task or process used*." (See Id., col. 9, ll. 33-39) (emphasis added).

Conversely, it is respectfully submitted that it would not be obvious to one skilled in the art to suspend a task as taught by the Peters patent in the current invention. The purpose of killing a task in the present invention, as recited in claim 1, is to prevent the task from running a loop indefinitely. (See Specification, p. 2, ll. 6-8). As such, it would not be desirable to merely suspend the task, only to have the task resume running the endless loop. Appellants again note the difference between the suspension and killing of a process. That is, a *suspension* of a process (as disclosed in Peters) entails a restarting of the process at a later time at the point the process was discontinued from executing. In contrast, a *killing* of a process ends the execution, and if the process is chosen to run at a later time, the process is executed anew.

Thus, it is respectfully submitted that neither the Morwood patent nor the Peters patent, either alone or in combination, teaches or suggests "that the manager task kills the client task when a current one of the client processes is not completed within a predetermined time period," as recited in claims 1. Accordingly, it is respectfully submitted that claim 1 is therefore allowable. The Appellants respectfully request that the Board overturn the Examiner's rejection under 35 U.S.C. § 103(a) of claim 1. Because claims 2-5 depend from and, therefore, include all the limitations of claim 1, Appellants respectfully submit that these claims are also allowable and

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request that the Examiner's rejections of these claims be overturned.

The Examiner rejected claims 6-10 on the same grounds as claims 1-5, indicating that claims 6-10 were merely a method of operation for the apparatus of claims 1-5. The Examiner used the same rationale to reject claim 11, indicating that claim 11 was merely a computer-readable storage medium storing a set of instructions to manage the apparatus defined in claim 1. For the reasons stated above with respect to claim 1, Appellants respectfully submit that claims 6-11 are allowable and request that the Examiner's rejections of these claims be overturned.

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8. Conclusions

For the reasons set forth above, Appellants respectfully request that the Board reverse the final rejections of the claims by the Examiner under 35 U.S.C. § 103(a), and indicate that claims 1-11 are allowable.

Respectfully submitted,

By: 
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Date: November 1, 2006

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CLAIMS APPENDIX

1. (Rejected) A system for managing a plurality of client processes, comprising:
 - a client task within which the client processes will be executed; and
 - a manager task running at a higher priority than the client task, the manager task queuing the client processes into the client task in priority order, wherein the manager task kills the client task when a current one of the client processes is not completed within a predetermined time period.
2. (Rejected) The system according to claim 1, wherein the manager task restarts the client task and queues a next one of the client processes into the client task.
3. (Rejected) The system according to claim 1, wherein the manager task restarts the client task and requeues the current client process into the client task.
4. (Rejected) The system according to claim 1, wherein the client task sends a response to the manager task indicating the execution of the current client process is complete.
5. (Rejected) The system according to claim 4, wherein the manager task, when receiving the response from the client task, queues a next one of the client processes into the client task.

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6. (Rejected) A method for managing a plurality of client processes, comprising the steps of:
queueing a first one of the client processes into a client task, wherein the first client process is executed within the client task; and
killing execution of the client task by a manager task executing at a priority higher than that of the client task when the first client process is not completed within a predetermined time period.

7. (Rejected) The method according to claim 6, further comprising the step of:
releasing a first semaphore by the manager task, wherein the client task does not execute until the first semaphore is released by the manager task.

8. (Rejected) The method according to claim 7, further comprising the step of:
releasing a second semaphore by the client task indicating the execution of the first client process is complete.

9. (Rejected) The method according to claim 6, further comprising the steps of:
restarting the client task by the manager task; and
queueing a second one of the client processes into the client task.

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10. (Rejected) The method according to claim 6, further comprising the steps of:

restarting the client task by the manager task; and
requeuing the first client process into the client task

11. (Rejected) A computer-readable storage medium storing a set of instructions, the set of instructions capable of being executed by a processor to manage a plurality of client processes, the set of instructions performing the steps of:

queueing a first one of the client processes into a client task, wherein the first client process is executed within the client task; and
killing execution of the client task by a manager task executing at a priority higher than that of the client task when the first client process is not completed within a predetermined time period.

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EVIDENCE APPENDIX

No evidence has been entered or relied upon in the present appeal.

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RELATED PROCEEDING APPENDIX

No decisions have been rendered regarding the present appeal or any proceedings related thereto.